

103^D CONGRESS
2^D SESSION

S. 1944

To increase and extend criminal and other penalties for health care fraud and abuse, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, FEBRUARY 22), 1994

Mr. KOHL introduced the following bill; which was read the first time

A BILL

To increase and extend criminal and other penalties for health care fraud and abuse, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Care Fraud
5 and Abuse Act of 1994”.

6 **SEC. 2. EXPANSION OF CIVIL AND CRIMINAL MONETARY**
7 **SANCTIONS.**

8 (a) CIVIL SANCTIONS.—Section 1128A of the Social
9 Security Act (42 U.S.C. 1320a–7a) is amended—

1 (1) in subsections (a) and (b), by striking
2 “\$2,000” each place it appears and inserting
3 “\$5,000”,

4 (2) in the second sentence of subsection (a), by
5 striking “not more than twice” and inserting “not
6 more than three times”, and

7 (3) by adding at the end the following new sub-
8 section:

9 “(m)(1) The maximum civil monetary penalty
10 amounts specified in subsections (a) and (b) shall be ad-
11 justed for inflation as provided in this subsection.

12 “(2) Not later than December 1, 1999, and Decem-
13 ber 1 of each fifth calendar year thereafter, the Secretary
14 shall prescribe and publish in the Federal Register a
15 schedule of maximum authorized penalties that shall apply
16 for violations that occur after January 1 of the year imme-
17 diately following such publication.

18 “(3) The schedule of maximum authorized penalties
19 shall be prescribed by increasing each of the amounts
20 specified in subsections (a) and (b) by the cost-of-living
21 adjustment for the preceding five years. Any increase de-
22 termined under the preceding sentence shall be rounded
23 to the nearest multiple of \$1,000.

24 “(4) For purposes of this subsection:

1 “(A) The term ‘cost-of-living adjustment
2 for the preceding five years’ means the percent-
3 age by which—

4 “(i) the Consumer Price Index for the
5 month of June of the calendar year preced-
6 ing the adjustment, exceeds

7 “(ii) the Consumer Price Index for
8 the month of June preceding the date on
9 which the maximum authorized penalty
10 was last adjusted under this subsection.

11 “(B) The term ‘Consumer Price Index’
12 means the Consumer Price Index for all urban
13 consumers published by the Department of
14 Labor.”.

15 (b) TREBLE DAMAGES FOR CRIMINAL SANCTIONS.—
16 Section 1128B of the Social Security Act (42 U.S.C.
17 1320a–7b) is amended by adding at the end the following
18 new subsection:

19 “(f) In addition to the fines that may be imposed
20 under subsection (a), (b), or (c), any individual found to
21 have violated the provisions of any of such subsections
22 may be subject to treble damages.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on January 1, 1995.

1 **SEC. 3. APPLICATION OF FEDERAL HEALTH ANTI-FRAUD**
 2 **AND ABUSE SANCTIONS TO ALL FRAUD AND**
 3 **ABUSE AGAINST ANY HEALTH BENEFIT PLAN.**

4 (a) CIVIL MONETARY PENALTIES.—Section 1128A
 5 of the Social Security Act (42 U.S.C. 1320a–7a) is amend-
 6 ed as follows:

7 (1) In subsection (a)(1), in the matter before
 8 subparagraph (A), by inserting “or of any health
 9 benefit plan,” after “subsection (i)(1)),”.

10 (2) In subsection (b)(1)(A), by inserting “or
 11 under a health benefit plan” after “title XIX”.

12 (3) In subsection (f)—

13 (A) by redesignating paragraph (3) as
 14 paragraph (4); and

15 (B) by inserting after paragraph (2) the
 16 following new paragraph:

17 “(3) With respect to amounts recovered arising
 18 out of a claim under a health benefit plan, the por-
 19 tion of such amounts as is determined to have been
 20 paid by the plan shall be repaid to the plan.”.

21 (4) In subsection (i)—

22 (A) in paragraph (2), by inserting “or
 23 under a health benefit plan” before the period
 24 at the end, and

25 (B) in paragraph (5), by inserting “or
 26 under a health benefit plan” after “or XX”.

1 (b) CRIMES.—Section 1128B of the Social Security
2 Act (42 U.S.C. 1320a–7b) is amended as follows:

3 (1) In the heading, by adding at the end the
4 following: “OR HEALTH BENEFIT PLANS”.

5 (2) In subsection (a)(1)—

6 (A) by striking “title XVIII or” and insert-
7 ing “title XVIII,”, and

8 (B) by adding at the end the following: “or
9 a health benefit plan (as defined in section
10 1128(i)),”.

11 (3) In subsection (a)(5), by striking “title
12 XVIII or a State health care program” and inserting
13 “title XVIII, a State health care program, or a
14 health benefit plan”.

15 (4) In the second sentence of subsection (a)—

16 (A) by inserting after “title XIX” the fol-
17 lowing: “or a health benefit plan”, and

18 (B) by inserting after “the State” the fol-
19 lowing: “or the plan”.

20 (5) In subsection (b)(1), by striking “title
21 XVIII or a State health care program” each place
22 it appears and inserting “title XVIII, a State health
23 care program, or a health benefit plan”.

24 (6) In subsection (b)(2), by striking “title
25 XVIII or a State health care program” each place

1 it appears and inserting “title XVIII, a State health
2 care program, or a health benefit plan”.

3 (7) In subsection (b)(3), by striking “title
4 XVIII or a State health care program” each place
5 it appears in subparagraphs (A) and (C) and insert-
6 ing “title XVIII, a State health care program, or a
7 health benefit plan”.

8 (8) In subsection (d)(2)—

9 (A) by striking “title XIX,” and inserting
10 “title XIX or under a health benefit plan,” and

11 (B) by striking “State plan,” and inserting
12 “State plan or the health benefit plan,”.

13 (c) HEALTH BENEFIT PLAN DEFINED.—Section
14 1128 of the Social Security Act (42 U.S.C. 1320a–7) is
15 amended by redesignating subsection (i) as subsection (j)
16 and by inserting after subsection (h) the following new
17 subsection:

18 “(i) HEALTH BENEFIT PLAN DEFINED.—For pur-
19 poses of sections 1128A and 1128B, the term ‘health ben-
20 efit plan’ means a health benefit program other than the
21 medicare program, the medicaid program, or a State
22 health care program.”.

23 (d) CONFORMING AMENDMENT.—Section
24 1128(b)(8)(B)(ii) of the Social Security Act (42 U.S.C.
25 1320a–7(b)(8)(B)(ii)) is amended by striking “1128A”

1 and inserting “1128A (other than a penalty arising from
2 a health benefit plan, as defined in subsection (i))”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect January 1, 1995.

5 **SEC. 4. CIVIL MONETARY PENALTIES INCLUDED IN ANTI-**
6 **KICKBACK SANCTIONS.**

7 (a) IN GENERAL.—Section 1128A(a) of the Social
8 Security Act (42 U.S.C. 1320a–7a(a)), as amended by sec-
9 tion 2(a), is amended—

10 (1) by striking “or” at the end of paragraph
11 (1)(D);

12 (2) by striking “, or” at the end of paragraph
13 (2) and inserting a semicolon;

14 (3) by striking the semicolon at the end of
15 paragraph (3) and inserting “; or”;

16 (4) by inserting after paragraph (3) the follow-
17 ing new paragraph:

18 “(4) carries out any activity in violation of
19 paragraph (1) or (2) of section 1128B(b);”;

20 (5) by striking “than \$5,000” and all that fol-
21 lows through the period and inserting “than, in
22 cases under paragraph (1) or (2), \$5,000 for each
23 item or service, in cases under paragraph (3),
24 \$15,000 for each individual with respect to whom
25 false or misleading information is given, and in cases

1 under paragraph (4), \$10,000 for each violation.”;
2 and

3 (6) by striking “than three times” and all that
4 follows through the period and inserting “than, in
5 cases under paragraph (1) or (2), three times the
6 amount claimed for each such item or service in lieu
7 of damages sustained by the United States or a
8 State agency because of such claim, and in cases
9 under paragraph (4), twice the total amount of the
10 remuneration offered, paid, solicited, or received in
11 violation of paragraph (1) or (2) of section
12 1128B(b).”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall take effect January 1, 1995.

15 **SEC. 5. VOLUNTARY DISCLOSURE PROGRAM.**

16 In consultation with the Attorney General of the
17 United States, the Secretary of Health and Human Serv-
18 ices shall publish proposed regulations no later than 9
19 months after the date of the enactment of this Act, and
20 final regulations no later than 18 months after such date
21 of enactment, establishing a program of voluntary disclo-
22 sure that would facilitate enforcement of sections 1128A
23 and 1128B of the Social Security Act (42 U.S.C. 1320a-
24 7a and 1320a-7b) and other relevant provisions of Fed-
25 eral law relating to health care fraud and abuse. Such pro-

1 gram should promote and provide incentives for disclo-
2 sures of potential violations of such sections and provi-
3 sions by providing that, under certain circumstances, the
4 voluntary disclosure of wrongdoing would result in the im-
5 position of penalties and punishments less substantial
6 than those that would be assessed for the same wrong-
7 doing if voluntary disclosure did not occur.

8 **SEC. 6. EXPANSION OF HEALTH CARE FRAUD INVESTIGA-**
9 **TIVE RESOURCES.**

10 There are authorized to be appropriated for the hir-
11 ing of additional personnel in the Department of Health
12 and Human Services Office of the Inspector General
13 \$25,000,000 for each of fiscal years 1994, 1995, 1996,
14 and 1997 to sustain and expand the investigation of health
15 care fraud.

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